

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

RAY SMITH,

Defendant.

Case No. 2:02-CR-00327-KJD-LRL

ORDER

Currently before the Court is Defendant Ray Charles Smith's Motion for Modification and Reduction of Sentence (#44). The Government filed a Response in Opposition (#45), to which Defendant filed a Reply (#46). Defendant seeks that the Court modify and reduce his sentence pursuant to 18 U.S.C. § 3553(a) and (c)(2), and 28 U.S.C. § 994(o). Specifically, Defendant avers that the "New Amendment 599" adopted by the Sentencing Commission made retroactively to Title 18 U.S.C. § 924(c) are (sic) applicable" and "eliminate [his] two-level enhancement for firearm possession. . ." resulting in a lower sentencing range. Defendant is incorrect.

18 U.S.C. § 3582(c)(2) provides, in pertinent part, that the district court has discretion to reduce the term of a previously imposed sentence of imprisonment when the sentencing range has subsequently been lowered by the Sentencing Commission. Here however, Defendant's sentence was imposed on December 13, 2002, (#28), more than two-years subsequent to the Sentencing

1 Commission's adoption of Amendment 599.¹ Additionally, the Court has examined Defendant's
2 sentence guideline calculation, and finds that Defendant's sentence was properly calculated under the
3 current guideline regime, and that the applicable guideline range has not been lowered subsequent to
4 Defendant's conviction so as to trigger a reduction under 18 U.S.C. § 3582(c)(2).

5 Accordingly, **IT IS HEREBY ORDERED** that Defendant Ray Charles Smith's Motion for
6 Modification and Reduction of Sentence (#44), is **DENIED**.

7 DATED this 8th day of July 2010.

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10 Kent J. Dawson
United States District Judge

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25 ¹Effective November 1, 2000, the Sentencing Commission adopted Amendment 599, an explicitly retroactive
26 amendment that modified the Guidelines applicable to 19 USC § 924(c) offenses. See U.S. Sentencing Guidelines
Manual § 2K2.4, cmt. n.2 (2008). This adoption was made pursuant to 29 U.S.C. § 994(o), as required by 18 U.S.C.
§ 3582(c).